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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 16th December, 2022

No. 13/1/9917-HII(2)-2022/18730.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 71/2017 dated 11.11.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DAVINDER SINGH, S/O SHRI D.S. NAYAL, R/O HOUSE NO. 1250/1, SECTOR 30-B, CHANDIGARH. (Workman)

AND

1. THE STATE OF HARYANA THROUGH ITS SECRETARY, DIRECTORATE OF DEVELOPMENT AND PANCHAYAT, MINI CIVIL SECRETARIAT, SECTOR 17, CHANDIGARH.
2. DIRECTOR DEVELOPMENT & PANCHAYAT, SECTOR 28, CHANDIGARH.(Management)

AWARD

1. The workman, Davinder Singh, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed as Peon on contract basis *vide* agreement dated 02.01.2012 by the management on DC rates fixed from time to time. The workman joined the management as Peon in January 2012. However, there was no contract between the workman and the management. The workman used to get his salary directly from the management without any mediator / contractor. There was no complaint etc. against the work & conduct of the workman. The workman was discharging his duties up to the full satisfaction of the management up to May 2015. The workman has worked with the management till 05.08.2015 continuously without any break in service and has completed more than 240 days in every year particularly preceding to the date of his illegal termination i.e. from 02.01.2012 to 05.08.2015. Since the management wanted to adjust some other persons at the place of the workman, as such, the management started creating grounds / facts so that the services of the workman can be dispensed with and his contract of service could not be renewed. As such the management issued a show cause notice dated 23.06.2015, *vide* which the workman was directed to explain his position regarding absent period of three days i.e. 28.05.2015, 04.06.2015 and 09.06.2015 which was duly explained by the workman *vide* his reply dated 29.06.2015, as per the actual facts. Apart from the said three days the workman has never absented himself, nor any complaint / charge sheet / memo has been issued to the workman by the management during his entire service period of three years and seven months.

(1233)

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However, upon receiving the memo dated 23.06.2015, the workman has duly submitted his reply on 29.06.2015 and explained the true facts along with supporting documents regarding the said absent period. The management No.2 without conducting any inquiry and without issuance of any charge sheet has passed the impugned order dated 05.08.2015 *vide* which services of the workman have been terminated / dispense with in an illegal, wrongful and arbitrary manner which is against the principles of natural justice and equity. The services of the workman have been terminated / dispense with on account of alleged absent period of only three days which has been duly explained by the workman *vide* his reply dated 29.06.2015. The impugned order dated 05.08.2015 being illegal, null and void is liable to be set aside on the following grounds :—

- (i) No alleged report of Superintendent which has been referred in order dated 05.08.2015 on the basis of which impugned order has been passed, has been supplied or brought on record by the management. Thus, it is crystal clear that the circumstance has been created against the poor workman and the workman has been passed on projected and manipulated grounds / facts just to adjust some blue-eyed person of the management.
- (ii) Since the services of the workman have been terminated / dispense with by way of punishment which is major / extreme action, thus, the management was required to conduct an inquiry regarding alleged absent period of three days.
- (iii) The punishment order of termination / dispensed with the services of the workman is not according to the alleged offence committed by the workman and the same is disproportionate to the gravity of the offence and the penalty order is too harsh. The termination order is bad in law and against the principles of natural justice and equity.
- (iv) The workman has duly explained his position regarding absence dated 28.05.2015 because the workman was not feeling well on the said date and has gone to Sector 19 Dispensary along with his brother and his brother duly informed the concerned Superintendent in this aspect which fact has not been denied by the management. However, on 04.06.2015 the workman has duly tried to make a call to the concerned Superintendent but his phone was out of range as such the message could not be conveyed. However, on 09.06.2015 the workman duly submitted leave application for second half day
- (v) From the language of Memo dated 23.06.2015 it is crystal clear that the management has already decided to terminate / dispense with the services of the workman. In fact, the management has already decided to adjust some other favourable person and the alleged notice was issued just to complete the proper formalities against the workman so that a defence can be created later on. As per the language of Memo dated 23.06.2015 in the last two lines *vide* which the management has already decided to terminate / dispense with the services of the workman and as such the order dated 05.08.2015 is the *mala fide* action of the management. The alleged memo is nothing but a manipulation and creation of proper formality against the workman and the same was issued in a pre-planned manner on the basis of which the impugned order dated 05.08.2015 has been passed in unreasonable and unjustified grounds.
- (vi) In fact the workman has already explained his alleged absence period of three days in his reply dated 29.06.2015 but to no a way. It is most inhuman and juvenile approach of the management that the termination order has been passed only on the account of alleged absence period of just three days.
- (vii) The punishment order of termination is too harsh and shocking against a person who is earning his livelihood through a contractual job of just ₹ 8587/- P.M. and pulling his family (wife and two children) in these days of sky rises of prices only on the ground of absent period of just three days which has been duly explained along with medical record.

- (viii) All the terms & conditions of the service contract are ex-parte and favourable to the management. The workman has no other option but to accept the same being contractual.
- (ix) The order of termination being a major penalty can only be passed by initiating an inquiry by issuance of charge sheet or at least a preliminary inquiry / report must be passed by the management. But the workman has been terminated only on the alleged report of the Superintendent by making the reference of the same.
- (x) It is well settled law of the Hon'ble Courts that the justice not only looks to have been done but the same has to be done in its true spirit and nature. However, whether the said principle can be nullified by showing / creating the proper formality of calling reply and giving personal hearing etc. to a poor workman.
- (xi) Even otherwise the order is bad in law because the same has been passed when the workman had gone to Haridwar for Kanwad Yatra from 04.08.2015 to 12.08.2015 by submitting an application dated 03.08.2015 and the workman has proceeded on leave and the order has been in an illegal manner during the leave period and no wages have been paid to the workman from 01.08.2015 to 05.08.2015 as per order dated 05.08.2015.

2. It is further averred that at the time of alleged termination the workman was not given any notice or notice pay in lieu of notice and was not paid any retrenchment compensation as provided under Section 25-F of the ID Act. While passing the termination order the management has violated Section 25-F, 25-G and 25-H of the ID Act and in sheet violation to the principle of natural justice. No charge sheet was served nor any inquiry was held against the workman and the management has not proved any charges against the workman and the workman was punished without any evidence against him. Moreover, the workman was provided / afforded any opportunity of hearing. As such the services of the workman were terminated in sheer violation of the natural justice and the rules applicable to the workman. As such the termination order of the workman is liable to be set aside and the workman is entitled for all the consequential benefits and the workman to be deemed into service for all intents and purposes. The duty / work which the workman was doing is permanent in nature and is still in progress with the management. Thus, prayer is made that termination order dated 05.08.2015 may be set aside and the management may be directed to reinstate the workman in service as Peon with continuity of service, full back wages and all other attendance benefits.

3. Upon notice, management No.1 & 2 contested the claim statement by filing joint written statement wherein it is stated that the workman was engaged as Peon in January 2012 for a period of six months till the selected candidates are appointed, in the office of Director Development & Panchayat on the rates fixed by the Deputy Commissioner. The workman was found absent from duty on 10.04.2015 at 4:00 P.M. His explanation on this account was called for *vide* Memo dated 23.04.2015 but he did not submit the reply. The workman absented himself from duties without any permission, which constitutes grave misconduct on his part. Therefore, after affording him full opportunity of defence, his services were dispensed with. No one has been engaged / adjusted after dispensing with the services of the workman. The concerned Branch Officer under whom the workman was working had submitted a report about the absence of the workman without any permission. On receipt of report, a show cause notice was issued to him *vide* letter dated 23.06.2015. The reply given by the workman was considered and an opportunity of hearing and to produce evidence in support of his defence was provided to him *vide* letter dated 22.07.2015. The workman appeared before the Director and only reiterated his reply given in response to the show cause notice. No other witness or evidence was produced by him. The Director Panchayat after considering the record *vide* order dated 05.08.2015 dispensed with the services of the workman. A true copy of the reports made by the Officer under whom the workman was working, show cause notice dated 23.06.2015 and letter dated 22.07.2015 providing an opportunity of personal hearing and to produce any other evidence and the final order dated 05.08.2015 are enclosed with the written reply. The impugned order is legal and valid and binding on the workman. The workman was engaged for a period of six months or till a selected candidate is appointed. A service agreement was also executed between the parties. Therefore, the workman cannot go beyond the service contract and

is bound by its terms & conditions. Rest of the averments of claim statement are denied as wrong and submission is made that the impugned order is legal and liable to be upheld and the present demand notice may be filed.

4. Replication not filed. From the pleadings of the parties, following issues were framed *vide* order dated 10.01.2018 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In evidence the workman Devinder Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with documents Exhibit 'W1' to Exhibit 'W3', Mark 'A' to Mark 'M'.

Exhibit 'W1' is the copy of reply dated Nil to show cause notice addressed from Devinder Singh to Additional Chief Secretary, New Haryana Civil Secretariat, Sector 17, Chandigarh.

Exhibit 'W2' is the original outpatient card dated 28.05.2015 of Government Multi-speciality Hospital, Sector 16, Chandigarh and allied dispensaries related to Devinder Singh

Exhibit 'W3' is show cause notice dated 15.06.2015 bearing endorsement No.AA04-2015/35010 dated 23.06.2015 issued from Additional Director Panchayat - Additional Development & Panchayat Department, Haryana, Chandigarh to Devinder Kumar - Contractual Peon.

Mark 'A' is copy of reply dated 29.06.2015 to show cause notice filed by Devinder Singh to Additional Director Panchayat - Additional Development & Panchayat Department, Haryana, Chandigarh.

Mark 'B' is copy of application dated 03.08.2015 moved by Devinder Singh to the Director Development & Panchayat Department, Haryana, Chandigarh seeking leave for seven days.

Mark 'C' is copy of termination order dated 05.08.2015 bearing endorsement No.AA4-2015/45481-82 dated 05.08.2015 issued by Chander Shekhar, IAS, Director Development & Panchayats Department, Haryana, Chandigarh.

Mark 'D' is copy of service agreement dated 02.01.2012 between the department and the workman for a period not exceeding six months (the reverse side of Mark 'D' i.e. page 2 of service agreement dated 02.01.2012 reveals that it is signed by Devinder Singh Nayal on 02.12.2011 and witnesses Baldev Singh and Dinesh Kumar on 02.01.2012).

Mark 'E' is copy of service agreement dated 06.01.2013 between the department and the workman for a period not exceeding six months (page 2 of Mark 'E' i.e. service agreement dated 06.01.2013 reveals that it is signed by Devinder Singh Nayal on 13.03.2013 and witness Jagbir Singh on 12.03.2013 and witness Rampal on 13.03.2013, whereas the reverse side of first page of Mark 'E', which is stamp paper of Rs.10 reveals that it was purchased by Devinder Singh Nayal from the stamp vendor on 12.03.2013).

Mark 'F' is copy of service agreement dated 06.07.2014 between the department and the workman for a period not exceeding six months (page 2 of Mark 'F' i.e. service agreement dated 06.07.2014 reveals that it is signed by Devinder on 06.07.2014 and witness Jai Kumar has not put date below his signatures whereas the reverse side of first page of Mark 'F', which is stamp paper of Rs.10 reveals that it was purchased by Devinder Singh Nayal from the stamp vendor on 15.09.2014).

On 13.08.2018 the workman closed his evidence.

6. On the other hand, the management examined MW1 Surya Parkash - Assistant Director, Office of Director Development & Panchayat Department, Haryana Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to 'M6'.

Exhibit 'M1' is the letter No.AA-4-2019/3757 dated 17.01.2019 issued from the office of Director Development and Panchayat Department, Haryana Chandigarh to Surya Parkash - Assistant Director whereby MW1 Surya Parkash was authorised to appear as a witness along with the record on behalf of the department / respondent.

Exhibit 'M2' is the attested copy of service agreement dated 06.01.2015 between the department and the workman for a period not exceeding further six months.

Exhibit 'M3' is the attested copy of the letter bearing No.AA-4-2015/25891 dated 23.04.2015 whereby the Director Development & Panchayat Department, Haryana, Chandigarh sought explanation from the workman for remaining absent on 10.04.2014 at 4:00 P.M.

Exhibit 'M4' is attested copy of show cause notice bearing No.AA-4-2015/35010 dated 23.06.2015 issued by Director Development & Panchayat Department, Haryana, Chandigarh to workman.

Exhibit 'M5' is the attested copy of letter No.AA-4-2015/40097 dated 22.07.2015 issued by Director Development & Panchayat Department, Haryana, Chandigarh to Devinder Kumar providing him opportunity for personal hearing for 28.07.2015 at 9:30 A.M.

Exhibit 'M6' is the attested copy of order dated 05.08.2015 passed by Shri Chander Shekhar, IAS, Director Development & Panchayats Department, Haryana, Chandigarh whereby the workman was relieved from the contractual service forthwith by giving him the wages for the period 01.08.2015 to 05.8.2015.

7. The management examined MW2 Vinod Kumar Assistant Director (Retired), office of Director Panchayat, Haryana who tendered his affidavit Exhibit 'MW2/A' along with documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

Exhibit 'MW2/1' is attested copy of the letter issued by Dy. Superintendent (Admn - I) for Director General, Development & Panchayat Development, Haryana, Chandigarh to Shri Vinod Kumar - Assistant Director - II (Retd.) bearing Memo No.AA4-2021/50351 dated 06.05.2021 relating to the subject of IDR 71/2017 Devinder Singh Versus Director, Panchayats, Haryana & Others.

Exhibit 'MW2/2' is attested copy of report of dated 09.06.2015 made by Shri Vinod Kumar - Superintendent, Election.

Exhibit 'MW2/3' is attested copy of written report dated 15.07.2015 made by Shri Vinod Kumar - Superintendent, Election whereby on direction of the Director, Panchayat he has reviewed his earlier report and thereafter recommended to take strict action against the contract employee.

Exhibit 'MW2/4' is attested copy of the photograph showing that copy of relieving order was got affixed by the management on the outside of the workman's residence.

On 28.02.2022 learned Law Officer Shri Krishan Lal closed evidence on behalf of management No.1 & 2.

8. On 11.11.2022 the workman made a statement that he do not press application dated 07.04.2022 filed by him for leading additional evidence, thus the same was dismissed being not pressed.

9. I have heard the arguments of learned representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

10. Onus to prove this issue is on the workman.

11. Under this issue the workman Davinder Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'F'.

12. On the other hand, learned representative for the management examined MW1 Surya Parkash, who *vide* his affidavit Exhibit 'MW1/A' deposed that he has been authorised to tender evidence on behalf of the respondents-managements *vide* memo No.AA-4/2019/3757 dated 17.01.2019 and he is well conversant with the facts of the present case. MW1 further deposed that the workman was engaged in the month of January, 2012, on the wages fixed by the Deputy Commissioner, for a period of six months or till the selected candidates are appointed, whichever is earlier, in the office of Director, Development & Panchayats Department as Peon under the outsourcing policy. The period of his engagement was being extended after every six months. Lastly, it was extended on 06.01.2015 and it was to expire on 05.07.2015. MW1 also deposed that the workman was found absent from duty on 10.04.2015 at 4:00 P.M. His explanation on this account was called for *vide* Memo dated 23.04.2015 but he did not submit his reply. On subsequent such absence, the concerned Branch Officer, under whom the workman was working, had submitted a report that on 28.05.2015 the workman after marking the attendance left the office and did not come back till 5:00 P.M., on 04.05.2015 he neither attended the office and nor sent any intimation in the office and on 09.06.2015 he also left the office by leaving second half day leave. Keeping in view of this report, a detailed show cause notice was issued to him *vide* letter dated 23.06.2015 to explain his position as to why his contract agreement which was valid up to 05.07.2015 may not be cancelled and he may not be relieved from the contractual service on this account. The reply given by the workman was considered and an opportunity of hearing for 28.07.2015 to produce evidence in support of his defence was also provided to him *vide* letter dated 22.07.2015. The workman appeared before the Director and reiterated his reply given in response to the show cause notice. No other witness or evidence was produced by him. The Director, Development and Panchayat while considering the matter observed that (i) copy of treatment slip dated 28.05.2015 shows only his BP as 110/80, which is normal and no other disease was diagnosed / reported and no rest was advised by the Doctor to the workman. In fact, if he was feeling unwell after reaching the office, then he should have reported the same to his office colleagues or to his higher officers, he did not do so; (ii) on 06.04.2015, if the phone of Superintendent was out of range and the intention of the delinquent was genuine then he should have informed to other officers / officials or to PA of the Director but he did not do so; (iii) on 09.06.2015 he was contacted on phone by the Director through the then Superintendent to call him, thereafter he immediately came to the office and tried to show that he was in office and his leave was for second half. Thus, it was conclusively observed by the Director, Development and Panchayats Department that he is habitual of mis-conducting himself and has no respect for the discipline and his superiors and consequently not fit for retention in the service and was relieved from the contractual service forthwith by paying him wages for working period, *vide* order dated 05.08.2015. MW1 further deposed that the workman was served upon show cause notice on 23.06.2015, he was given opportunity of personal hearing *vide* Memo dated 22.07.2015; he was heard on 28.07.2015 and then the competent authority after considering the whole matter passed the order dated 05.08.2015. Thus, the required fact finding procedure in the case of contractual employees has been followed. Further, no one has been engaged / retained / adjusted in place of the workman after relieving him from the contractual service. Therefore, the provisions of Section 25-F, 25-G & 25-H of the ID Act have not been violated and the impugned order dated 05.08.2015 is legal, valid and maintainable.

13. To support his oral version learned Law Officer for the managements referred documents Exhibit 'M1' to Exhibit 'M6'.

14. The management examined MW2 Vinod Kumar (Retd.) Assistant Director, Office of Director, Development & Panchayat Department, Haryana, Chandigarh, who *vide* his affidavit Exhibit 'MW2/A' deposed that he retired as Assistant Director from the office of Director, Development & Panchayats Departments, Chandigarh on 31.10.2018 and he has been called to tender evidence on behalf of the respondents-management *vide* Memo No.AA4-2021/50351 dated 06.05.2021 and further deposed that he is well conversant with the facts of the present case. During his service, while working as Superintendent of Election Branch, the duty of Shri Davinder Kumar, the workman was assigned as Peon in the Election Branch in the year 2015. Shri Davinder Singh was found absent from duty on 10.04.2015 at 4:00 P.M. His explanation on this account was

called *vide* Memo dated 23.04.2015 but he did not submit his reply and on his subsequent absence, he being Superintendent of concerned branch submitted a report dated 09.06.2015 that Shri Davinder Singh, the workman, after marking the attendance left the office and did not come back till 5:00 P.M. Similarly on 04.06.2015 he neither attends the office nor he sent any intimation in the office and on 09.06.2015 he left the office by leaving an application for second half day leave. Keeping in view of this report, a detailed show cause notice was issued to him *vide* letter dated 23.06.2015 to explain his position as to why his contract agreement which was valid up to 05.07.2015 may not be cancelled and he may not be relieved from the contractual service on this account. In pursuance of show cause notice, the workman submitted reply to the show cause notice. Upon the reply of Shri Devinder Singh, the conclusive comments of the deponent were also sought by the Director Panchayat before taking final view of the matter. In response thereto the deponent submitted his comments by stating that apart from above misconduct on 10.06.2015 at 10:00 A.M., a meeting of group of Ministers was convened wherein the issue to reconstitute the sub-divisions, sub-tehsils, panchayats and panchayat samitis was to be discussed and Shri Davinder Kumar was directed by him to accompany him along with files and copies of agenda in order to participate in the meeting. But the workman threatened him 'not to consider me Jasvinder, I can do more and my approach is at higher level'. The workman neither accompanied him nor cooperated him in the job. The workman was afforded an opportunity of personal hearing for 28.07.2015 by the Director Panchayat before taking the final view of the matter. Accordingly, he was heard on 28.05.2015 by the Director Panchayat. After considering the whole matter, the Director Panchayat recorded his findings on 05.08.2015. The copy of order dated 05.08.2015 whereby Shri Davinder Singh was relieved from the contractual service forthwith by paying the wages for the period from 01.08.2015 to 05.08.2015 was got affixed on the outside of his residence and photographs of such acts were obtained for record. The conduct of workman was not satisfactory. Had he been retained in service it would have lead to promote indiscipline in the office. Therefore, the order dated 05.08.2015 passed by the Director Panchayat is maintainable and the petition of the workman is liable to be dismissed. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

15. From the oral as well as documentary evidence led by the parties, it comes out that admittedly the workman was engaged as Peon in the office of Director, Development & Panchayat, Chandigarh in January 2012 for a period of six months or till the selected candidates are appointed on the rates fixed by the Deputy Commissioner. Further it is admitted of the parties that the period of his engagement on contractual basis was extended after every six months and lastly it was extended on 06.01.2015 and it was to expire on 05.07.2015. Copy of the last service agreement dated 06.01.2015 is Exhibit 'M2'.

16. The workman was relieved from the contractual service *vide* order dated 05.08.2015 / Exhibit 'M6' passed by Shri Chander Shekhar, IAS, Director Development & Panchayats Department, Haryana, Chandigarh. The workman has challenged the order Exhibit 'M6' being illegal termination and has taken the plea that there was no complaint etc. against his work & conduct and he was discharging his duties up to the full satisfaction of the management up to May 2015. On the other hand, the managements have denied the aforesaid plea on the ground that the workman was found absent from duty on 10.04.2015 at 4:00 P.M. His explanation was called *vide* Memo dated 23.04.2015 / Exhibit 'M3', to which the workman did not submit the reply. Since the workman absented himself from duties without any permission, it constitutes grave misconduct on his part. Besides, the Superintendent Election under whom the workman was working submitted a report about the absence of the workman without any permission. On receipt of said report a show cause notice *vide* letter dated 23.06.2015 / Exhibit 'M4' was issued to the workman to which the workman filed reply, which was considered and opportunity of hearing and to produce the defence evidence was provided to the workman *vide* letter dated 22.07.2015 / Exhibit 'M5'. The workman did not examine any witness or produced any evidence except the reply given to the show cause notice. The Director Panchayat after considering the record and the reply filed by the workman in response to show cause notice dated 23.06.2015, dispense with the services of the workman by passing a legal and valid order dated 05.08.2015 / Exhibit 'M6'.

17. Learned representative for the workman laid much stress upon the fact that the alleged report of the Superintendent Election on the basis of which the show cause notice dated 23.06.2015 / Exhibit 'M4' was issued to the workman, is not produced along with the written statement and in the testimony of MW1. To support his contentions learned representative for the workman has referred the cross-examination of MW1 Surya Parkash wherein he admitted as correct that they had not attached the report of the Superintendent on the basis of which the workman was relieved either with the written statement or with the affidavit before the Hon'ble Court. MW1 further admitted as correct that the said copy of report has not been supplied to the workman. In order to meet the objection of non-production of report of the Superintendent, the management examined MW2 Vinod Kumar the then Superintendent who proved into evidence his written report dated 09.06.2015 vide Exhibit 'MW2/2'. The contents of Exhibit 'MW2/2' translated from Hindi to English are produced below :—

"That Shri Davinder Kumar deputed in Election Branch, on dated 28.05.2015 after marking his presence in the morning at 9:00, did not return till 5:00 in the evening. In this regard, he made written report dated 28.05.2015 to P/DP. Thereafter this employee did not come to office on 04.06.2015 nor any leave application is received from him. He was contacted on phone but he did not take the phone call. In this regard also written report was made to P/DP. Besides, this employee today on dated 09.06.2015 has left after giving leave application for the second half day.

Today on 09.06.2015 Hon'ble Director Panchayat called Shri Davinder Kumar into his room and enquired from him. At that time ADP was also present in the chamber of Director. This official informed that he is doing the work of Clerk simultaneously with his job of Peon. When Hon'ble Director Panchayat called him and enquired from him that whether the workman is doing the work of Clerk, then he informed that the workman only does the work of Peon. The Hon'ble Director Panchayat told to initiate the disciplinary action immediately against this employee."

MW2 further proved into evidence his written report dated 15.07.2015 / Exhibit 'MW2/3'. The contents of Exhibit 'MW2/3' translated from Hindi to English are reproduced as below :—

"In compliance with the directions of the Hon'ble Director Panchayat given in the previous page, he reconsidered his comments given at the previous page at Note 4. Shri Davinder Singh - Peon (Contractual) whenever leave for his personal work for half an hour or hour then he do not return for about two three hours. When he remains present in the office, then on asking he replies that he has come in time. In this regard he has earlier in his note dated 09.06.2015 reported about the workman's absence and his conduct.

Apart from that, on 11.06.2015 at 11:00 in the morning a meeting of Council of Ministers convened at Haryana Niwas, Chandigarh to discuss the reconstitution of sub-division, tehsil, sub-tehsil, panchayat and panchayat samiti. Shri Davinder Kumar, Peon was told to reach there with files and copies of agenda but this official threatened him that he will not go and to do whatever he wants and do not consider him Jasvinder as he can do much more and he has approach with the higher level. This employee did not attend the meeting nor assisted him in any manner.

To his opinion, in view of the aforesaid this official does not deserve any sympathy. Therefore, it is recommended to take strict action against this contractual employee so that in future there may not be any indiscipline in the office."

From the contents of above said reports dated 09.06.2015 / Exhibit 'MW2/2' and dated 15.07.2015 / Exhibit 'MW2/3' it is clearly made out that the workman was habitual of remaining absent from duties without getting the leave sanctioned from the competent authority and without any intimation and his conduct towards

his immediate superior i.e. Superintendent Vinod Kumar was not satisfactory and in this regard the then Superintendent Vinod Kumar has reported the matter to the Director Development & Panchayats, Haryana, Chandigarh. The workman has taken the plea that the reports of the Superintendent i.e. Exhibit 'MW2/2' and Exhibit 'MW2/3' are produced into management's evidence at a later stage which has caused prejudice to his interest. To my opinion, the aforesaid plea taken by the workman is devoid of merits as full opportunity to cross-examine MW2 Vinod Kumar was provided to the workman and learned representative for the workman has conducted cross-examination of MW2, therefore, no prejudice is caused to the interest of the workman.

18. Learned representative for the workman argued that the alleged reports Exhibit 'MW2/2' and Exhibit 'MW2/3' have been prepared in order to shunt out the workman from his services with *mala fide* intentions and at the behest of the then Director. To support his arguments learned representative for the workman referred the cross-examination of MW2 Vinod Kumar where he has denied the suggestion as wrong that he has prepared the alleged report in order to shunt out the workman from his services with mala fide intention and at the behest of the then Director. To my opinion, the aforesaid plea taken by learned representative for the workman does not carry any force because the workman has not alleged any hostility against the then Superintendent or the then Director. The workman has no enmity either with the then Superintendent or the then Director of the management. Therefore, there is no reason for the then Superintendent or the then Director to get prepared false reports against the workman.

19. The argument of learned representative for the workman that the reports Exhibit 'MW2/2' and Exhibit 'MW2/3' are produced into evidence to fill up the lacuna, is devoid of merits as from the initial stage it was the plea of the management that the then Superintendent has reported about the absence of the workman. The said reports are proved into evidence by examining the reporting official i.e. the then Superintendent MW2 Vinod Kumar who has made the said written reports. As already discussed the workman has availed the full opportunity to cross-examine MW2.

20. As far as the termination of the workman is concerned, the workman was relieved from the contractual service with effect from 05.08.2015 *vide* order dated 05.08.2015 / Exhibit 'M6'. Before passing order Exhibit 'M6' the show cause notice *vide* letter dated 23.06.2015 / Exhibit 'M4' was issued to the workman. Undisputedly the workman on receipt of show cause notice *vide* letter dated 23.06.2015 filed his reply on 29.06.2015. The workman did not dispute the contents of his reply dated 29.06.2015 as mentioned in the order Exhibit 'M6'. Thus, undisputedly the workman in his reply dated 29.06.2015 stated that on 28.05.2013 after reaching office he was not feeling well due to giddiness. He called his brother, who took him to Sector 19, Government Dispensary where he was given treatment. A copy of treatment slip has been enclosed with his reply. For his absence on 04.06.2015 he has explained that he was ill and tried to contact Shri Vinod Kumar, Superintendent over telephone but he could not be contacted as his phone was out of range. With regard to his absence on 09.06.2015 he has pleaded that due to some unavoidable circumstances he has to leave the office after submitting half day leave. Finally he has pleaded that he is a poor man and pulling his family comprising of wife and two children very hardly. In case his services are dispensed with, his family will be on the road. Therefore, he had submitted his apology with an assurance that he will not repeat such type of conduct in future and requested to file the show cause notice and further requested that he may be given personal hearing before taking the final decision in the matter, as proved from the endorsement on Exhibit 'MW2/3'. The Director Development & Panchayats, Haryana Chandigarh on 17.07.2015 passed the order to the effect that before taking a final decision he would like to give a personal hearing to Mr. Davinder Singh on 28.07.2015 at 9:30 A.M. in his office. AW1 Davinder Singh when put to cross-examination stated that it is correct that he was given personal hearing as well issued show cause notice to this effect. The aforesaid version of AW1 Davinder Singh supports plea of the management that before passing order dated 05.08.2015 / Exhibit 'M6', the workman was issued show cause notice and opportunity of personal hearing was also provided to him.

21. From the discussion made above, it is duly proved on record that before passing order dated 05.08.2015 the management has complied with the proper procedure of issuing show cause notice, obtained reply, provided opportunity to the workman to lead defence evidence and also provided opportunity to the workman for personal hearing. Moreover, the last contract of the workman with the management expired on 05.07.2015. *Vide* order dated 05.08.2015 / Exhibit 'M6' the workman was ordered to be relieved from the contractual service forthwith by paying him the wages for the period 01.08.2015 to 05.08.2015. The workman did not dispute the receipt of wages of the said period.

22. In view of the reasons recorded above, the termination of the workman on the basis of the order dated 05.08.2015 / Exhibit 'M6' is not illegal.

23. Accordingly, this issue is decided against the workman and in favour of the managements No.1 & 2.

Relief :

24. In the view of foregoing findings on the issue, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 11th November, 2022.

(Sd.). . .,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

Secretary Labour
Chandigarh Administration.

CHANGE OF NAME

I, Amneet Kaur, W/o Avtar Singh, # 2148, Ambedkar Colony, Dhanas, Chandigarh, have changed my name to Anita.

[970-1]

मैं, रविंदर बजाज, पुत्र परमजीत सिंह, # 1272, सैक्टर 21-बी, चंडीगढ़, ने अपना नाम बदलकर रविंदर सिंह रख लिया है ।

[971-1]

I, Kamal, W/o Sajjan Kumar, R/o # 6365, Maloya Colony, Chandigarh have changed my name to Nitlesh Devi.

[972-1]

I, Ratni Devi, W/o Bhagwan Dass, R/o 6365, Maloya Colony, Chandigarh, have changed my name to Bateri.

[973-1]

I, Rakesh, S/o Partap Chand, # 670, Sector 30-B, Chandigarh, have changed my name to Rakesh Kapoor.

[974-1]

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